



**SEALED**

United States Department of Justice

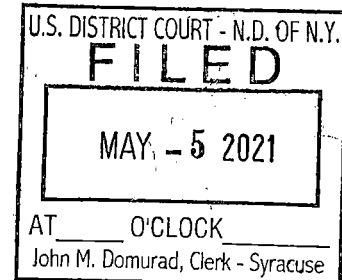
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May 4, 2021

Hon. Andrew T. Baxter  
U.S. Magistrate Judge  
Federal Building and U.S. Courthouse  
P.O. Box 7396  
Syracuse, New York 13261-7396



Re: *United States and State of New York ex rel. Dr. Helene Bernstein, MD, PhD*  
*v. Dr. Robert Silverman, et al*, No. 5:20-CV-630 (MAD/ATB):  
Request for Extension to Intervene  
**(filed *ex parte* and under seal)**

Dear Magistrate Judge Baxter:

Pursuant to 31 U.S.C. § 3730(b)(3), the United States respectfully requests entry of an order extending until November 10, 2021 its deadline to elect whether to intervene and take over the prosecution of this False Claims Act *qui tam* case. We have coordinated this filing with the Office of the New York State Attorney General, and that Office requests that the extension also inure to the State's benefit. The relator, through counsel, consents to this request.

In June 2020, the relator filed a sealed *qui tam* complaint alleging that the defendants, among other things, knowingly defrauded the Federal and New York State governments by billing Medicare, Medicaid and other federal healthcare programs for certain services associated with ultrasonography and fetal nonstress tests as part of the care provided to expectant mothers with high-risk pregnancies that were not actually rendered (e.g. viewing and reading the test images and reports that the defendants allegedly used as the basis for further patient care and treatment).

**There is Good Cause for the Requested Extension**

Under the *qui tam* provisions of the False Claims Act, the United States initially has 60 days from the date it is served with a relator's complaint and written disclosure of the material evidence in the relator's possession to elect whether to intervene and take over the prosecution of the case, during which time the complaint remains under seal. 31 U.S.C. § 3730(b)(2). These provisions are intended to provide the United States time to adequately investigate the relator's allegations, review the supporting evidence, and make an informed decision on whether to intervene before the allegations are made public. The Act provides that the United States may, for good cause, move the court for extensions of time to elect whether to intervene in the matter, during which the complaint remains under seal. *Id.* § 3730(b)(3).

Good cause exists to extend the time for the United States to make its intervention decision in this case. Since the Court granted our last extension request, the United States has gathered documents, interviewed the Relator and has had several subsequent communications with her counsel

Letter to Magistrate Judge Baxter

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with respect to the government's requests for additional information to clarify relator's allegations. Further, the government has begun its review of claims data and has taken other investigative steps in an effort to determine the merit of the allegations in the relator's complaint. The United States and the State of New York need additional time to analyze the identified claims. Following this coordinated review, the government intends to issue administrative subpoenas and civil investigative demands and will need additional time to collect and review evidence, identify and interview potential witnesses to determine the scope of the conduct. Here, where the United States has acted diligently to investigate the relator's allegations but needs additional time to conduct its investigation, the "good cause" standard in Section 3730(b)(3) is clearly satisfied.

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The United States has made the relator aware of this request but has not served her with a copy of this motion because it contains confidential information concerning the government's investigation. The False Claims Act expressly permits the government to submit documents *ex parte* and under seal when seeking extensions of time. 31 U.S.C. § 3730(b)(3). Should the Court grant this motion, the United States would provide a copy of the executed order to the relator and to the State of New York.

Respectfully,

ANTOINETTE T. BACON

Acting United States Attorney

Digitally signed by

CARL EURENIUS

Date: 2021.05.04

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By:

CARL G. EURENIUS

Assistant United States Attorney

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